

**2SSB 5056 - S AMD 538**

By Senator Nelson

ADOPTED 02/09/2016

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 70.240.020 and 2008 c 288 s 3 are each amended to  
4 read as follows:

5 (1) Beginning July 1, 2009, no manufacturer, wholesaler, or  
6 retailer may manufacture, knowingly sell, offer for sale, distribute  
7 for sale, or distribute for use in this state a children's product or  
8 product component containing the following:

9 (a) Except as provided in subsection (~~((2))~~) (3) of this section,  
10 lead at more than .009 percent by weight (ninety parts per million);

11 (b) Cadmium at more than .004 percent by weight (forty parts per  
12 million); or

13 (c) Phthalates, individually or in combination, at more than 0.10  
14 percent by weight (one thousand parts per million).

15 (2) Beginning July 1, 2016, no manufacturer, wholesaler, or  
16 retailer may manufacture, knowingly sell, offer for sale, distribute  
17 for sale, or distribute for use in this state children's products or  
18 residential upholstered furniture, as defined in RCW 70.76.010,  
19 containing TDCPP or TCEP in amounts greater than one thousand parts  
20 per million in any product component.

21 (3) If determined feasible for manufacturers to achieve and  
22 necessary to protect children's health, the department, in  
23 consultation with the department of health, may by rule require that  
24 no manufacturer, wholesaler, or retailer may manufacture, knowingly  
25 sell, offer for sale, distribute for sale, or distribute for use in  
26 this state a children's product or product component containing lead  
27 at more than .004 percent by weight (forty parts per million).

28 NEW SECTION. Sec. 2. A new section is added to chapter 70.240  
29 RCW to read as follows:

30 (1) Beginning July 1, 2016, no manufacturer, wholesaler, or  
31 retailer may manufacture, knowingly sell, offer for sale, distribute

1 for sale, or distribute for use in this state residential upholstered  
2 furniture, as defined in RCW 70.76.010, or children's products  
3 containing a flame retardant in any product component in amounts  
4 greater than one thousand parts per million identified by the  
5 department as a high priority chemical of high concern for children  
6 as required under RCW 70.240.030.

7 (2) TBBPA, chemical abstracts service number 79-94-7 as of the  
8 effective date of the section, that has undergone a reactive process  
9 and is covalently bonded to a polymer in a product or product  
10 component is not subject to the restrictions in subsection (1) of  
11 this section.

12 (3) Antimony and antimony compounds, chemical abstracts service  
13 number 7440-36-0 as of the effective date of this section, are not  
14 flame retardants for purposes of this section and are not subject to  
15 the restrictions of subsection (1) of this section.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.240  
17 RCW to read as follows:

18 (1) By rule, the department may identify a high priority  
19 chemical, as defined in RCW 70.240.010, as a chemical of high concern  
20 for children only if it meets one or more of the criteria of RCW  
21 70.240.030(1) (a) through (c). The adoption of a rule to identify a  
22 flame retardant as a high priority chemical of high concern for  
23 children after January 1, 2015, must be completed prior to December  
24 1st of any year, and the restrictions under section 2 of this act  
25 shall take effect at the end of the regular legislative session in  
26 the following year.

27 (2) In addition to the requirements of subsection (1) of this  
28 section, before a flame retardant may be identified as a high  
29 priority chemical of high concern for children after January 1, 2015,  
30 the department must also submit a report to the legislature no later  
31 than at the time of publication of the notice of a rule-making  
32 hearing required under RCW 34.05.320. The report to the legislature  
33 must contain:

34 (a) A determination whether children or vulnerable populations  
35 are likely to be exposed to the chemical directly or indirectly from  
36 its use in products. The determination of the department must be made  
37 after an evaluation of available information on:

38 (i) Levels of the flame retardants in consumer products;

1 (ii) Migration of the flame retardants out of products during and  
2 after use; and

3 (iii) Levels of the flame retardants in humans and the  
4 environment, including but not limited to the home environment;

5 (b) A review of available toxicity data to evaluate the health  
6 concerns for children or vulnerable populations; and

7 (c) A determination of whether a safer alternative has been  
8 identified to meet applicable fire safety standards for residential  
9 furniture and children's products by evaluating existing chemical  
10 action plans and assessments of safer alternatives.

11 (3) The department must identify the sources of information it  
12 relied upon in making the determination required in subsection (2) of  
13 this section, including peer-reviewed science.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.240  
15 RCW to read as follows:

16 (1) Beginning July 1, 2016, at the request of the department, a  
17 manufacturer of residential upholstered furniture or children's  
18 products shall, within sixty days of the request, submit a  
19 certificate of compliance stating that the product or product  
20 component meets the requirements of section 2 of this act. A  
21 manufacturer required under any other state statute to provide a  
22 certificate of compliance may develop one certificate containing all  
23 required information.

24 (2) The certificate of compliance must include the following:

25 (a) Chemical names and chemical abstracts service registry  
26 numbers for all chemicals present in the product or product component  
27 that act as flame retardants;

28 (b) The specific basis upon which an exemption, if applicable, is  
29 claimed; and

30 (c) The signature of an authorized official of the manufacturing  
31 company.

32 (3) A manufacturer completing a certificate of compliance shall  
33 keep a copy of the certificate on file for as long as the product or  
34 product component contains flame retardants. If a manufacturer ceases  
35 to sell or distribute products or product components containing flame  
36 retardants, the manufacturer must retain the certificate on file for  
37 three years from the date of the last sale or distribution.

1       **Sec. 5.** RCW 70.240.010 and 2008 c 288 s 2 are each amended to  
2 read as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

5       (1) "Children's cosmetics" means cosmetics that are made for,  
6 marketed for use by, or marketed to children under the age of twelve.  
7 "Children's cosmetics" includes cosmetics that meet any of the  
8 following conditions:

9       (a) Represented in its packaging, display, or advertising as  
10 appropriate for use by children;

11       (b) Sold in conjunction with, attached to, or packaged together  
12 with other products that are packaged, displayed, or advertised as  
13 appropriate for use by children; or

14       (c) Sold in any of the following:

15       (i) Retail store, catalogue, or online web site, in which a  
16 person exclusively offers for sale products that are packaged,  
17 displayed, or advertised as appropriate for use by children; or

18       (ii) A discrete portion of a retail store, catalogue, or online  
19 web site, in which a person offers for sale products that are  
20 packaged, displayed, or advertised as appropriate for use by  
21 children.

22       (2) "Children's jewelry" means jewelry that is made for, marketed  
23 for use by, or marketed to children under the age of twelve.  
24 "Children's jewelry" includes jewelry that meets any of the following  
25 conditions:

26       (a) Represented in its packaging, display, or advertising as  
27 appropriate for use by children under the age of twelve;

28       (b) Sold in conjunction with, attached to, or packaged together  
29 with other products that are packaged, displayed, or advertised as  
30 appropriate for use by children;

31       (c) Sized for children and not intended for use by adults; or

32       (d) Sold in any of the following:

33       (i) A vending machine;

34       (ii) Retail store, catalogue, or online web site, in which a  
35 person exclusively offers for sale products that are packaged,  
36 displayed, or advertised as appropriate for use by children; or

37       (iii) A discrete portion of a retail store, catalogue, or online  
38 web site, in which a person offers for sale products that are  
39 packaged, displayed, or advertised as appropriate for use by  
40 children.

1 (3)(a) "Children's product" includes any of the following:

2 (i) Toys;

3 (ii) Children's cosmetics;

4 (iii) Children's jewelry;

5 (iv) A product designed or intended by the manufacturer to help a  
6 child with sucking or teething, to facilitate sleep, relaxation, or  
7 the feeding of a child, or to be worn as clothing by children; or

8 (v) (~~Child car seats~~) A portable infant or child safety seat  
9 designed to attach to an automobile seat.

10 (b) "Children's product" does not include the following:

11 (i) Batteries;

12 (ii) Slings and catapults;

13 (iii) Sets of darts with metallic points;

14 (iv) Toy steam engines;

15 (v) Bicycles and tricycles;

16 (vi) Video toys that can be connected to a video screen and are  
17 operated at a nominal voltage exceeding twenty-four volts;

18 (vii) Chemistry sets;

19 (viii) Consumer electronic products, including but not limited to  
20 personal computers, audio and video equipment, calculators, wireless  
21 phones, game consoles, and handheld devices incorporating a video  
22 screen, used to access interactive software and their associated  
23 peripherals;

24 (ix) Interactive software, intended for leisure and  
25 entertainment, such as computer games, and their storage media, such  
26 as compact disks;

27 (x) BB guns, pellet guns, and air rifles;

28 (xi) Snow sporting equipment, including skis, poles, boots, snow  
29 boards, sleds, and bindings;

30 (xii) Sporting equipment, including, but not limited to bats,  
31 balls, gloves, sticks, pucks, and pads;

32 (xiii) Roller skates;

33 (xiv) Scooters;

34 (xv) Model rockets;

35 (xvi) Athletic shoes with cleats or spikes; and

36 (xvii) Pocket knives and multitools.

37 (4) "Cosmetics" includes articles intended to be rubbed, poured,  
38 sprinkled, or sprayed on, introduced into, or otherwise applied to  
39 the human body or any part thereof for cleansing, beautifying,  
40 promoting attractiveness, or altering the appearance, and articles

1 intended for use as a component of such an article. "Cosmetics" does  
2 not include soap, dietary supplements, or food and drugs approved by  
3 the United States food and drug administration.

4 (5) "Department" means the department of ecology.

5 (6) "High priority chemical" means a chemical identified by a  
6 state agency, federal agency, or accredited research university, or  
7 other scientific evidence deemed authoritative by the department on  
8 the basis of credible scientific evidence as known to do one or more  
9 of the following:

10 (a) Harm the normal development of a fetus or child or cause  
11 other developmental toxicity;

12 (b) Cause cancer, genetic damage, or reproductive harm;

13 (c) Disrupt the endocrine system;

14 (d) Damage the nervous system, immune system, or organs or cause  
15 other systemic toxicity;

16 (e) Be persistent, bioaccumulative, and toxic; or

17 (f) Be very persistent and very bioaccumulative.

18 (7) "Manufacturer" includes any person, firm, association,  
19 partnership, corporation, governmental entity, organization, or joint  
20 venture that produces a children's product or an importer or domestic  
21 distributor of a children's product. For the purposes of this  
22 subsection, "importer" means the owner of the children's product.

23 (8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP),  
24 dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl  
25 phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl  
26 phthalate (DnOP).

27 (9) "Toy" means a product designed or intended by the  
28 manufacturer to be used by a child at play.

29 (10) "Trade association" means a membership organization of  
30 persons engaging in a similar or related line of commerce, organized  
31 to promote and improve business conditions in that line of commerce  
32 and not to engage in a regular business of a kind ordinarily carried  
33 on for profit.

34 (11) "Very bioaccumulative" means having a bioconcentration  
35 factor or bioaccumulation factor greater than or equal to five  
36 thousand, or if neither are available, having a log Kow greater than  
37 5.0.

38 (12) "Very persistent" means having a half-life greater than or  
39 equal to one of the following:

1 (a) A half-life in soil or sediment of greater than one hundred  
2 eighty days;

3 (b) A half-life greater than or equal to sixty days in water or  
4 evidence of long-range transport.

5 (13) "TCEP" means the chemical (tris(2-chloroethyl)phosphate);  
6 chemical abstracts service number 115-96-8, as of the effective date  
7 of this section.

8 (14) "TDCPP" means the chemical (tris(1,3-dichloro-2-  
9 propyl)phosphate); chemical abstracts service number 13674-87-8, as  
10 of the effective date of this section.

11 (15) "Technically feasible" means an alternative that is  
12 available at a cost and in sufficient quantity to permit the  
13 manufacturer to produce an economically viable product.

14 **Sec. 6.** RCW 70.240.050 and 2008 c 288 s 7 are each amended to  
15 read as follows:

16 (1) A manufacturer of products that are restricted under this  
17 chapter must notify persons that sell the manufacturer's products in  
18 this state about the provisions of this chapter no less than ninety  
19 days prior to the effective date of the restrictions.

20 (2) A manufacturer that produces, sells, or distributes a product  
21 prohibited from manufacture, sale, or distribution in this state  
22 under this chapter shall recall the product and reimburse the  
23 retailer or any other purchaser for the product.

24 (3) A manufacturer of children's products in violation of this  
25 chapter is subject to a civil penalty not to exceed five thousand  
26 dollars for each violation in the case of a first offense.  
27 Manufacturers who are repeat violators are subject to a civil penalty  
28 not to exceed ten thousand dollars for each repeat offense. Penalties  
29 collected under this section must be deposited in the state toxics  
30 control account created in RCW 70.105D.070.

31 (4) Retailers who unknowingly sell products that are restricted  
32 from sale under this chapter are not liable under this chapter.

33 (5) The sale or purchase of any previously owned product  
34 containing a chemical restricted under this chapter made in casual or  
35 isolated sales as defined in RCW 82.04.040 or by a nonprofit  
36 organization is exempt from this chapter."

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1       On page 1, line 1 of the title, after "plans;" strike the  
2 remainder of the title and insert "amending RCW 70.240.020,  
3 70.240.010, and 70.240.050; and adding new sections to chapter 70.240  
4 RCW."

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